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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/614,652 | 07/07/2003 | George Cintra | 08935-216002 | 7512 |

26161 7590 06/21/2005

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| EXAMINER |
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BAREFORD, KATHERINE A

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| ART UNIT | PAPER NUMBER |
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1762

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,652

Applicant(s)

CINTRA ET AL.

Examiner

Katherine A. Bareford

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-18, 51-57 and 59-63 is/are rejected.
- 7) ☒ Claim(s) 19, 21, 64 and 65 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Claims 1-15, 20, 22-50 and 58 are canceled.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 26, 2005 has been entered.

The amendment of May 26, 2005 has been entered. After the entry of the amendment, claims 1-15, 20, 22-50 and 58 are canceled, and claims 16-19, 21, 51-57 and 59-65 are present for examination.

Claim Objections

2. The objection to claim 63 because of informalities is withdrawn due to applicant's amendment of May 26, 2005 to claim 63 to provide that the same nebulizer of claim 16 is in claim 63 by using "the vibratory nebulizer" in claim 63 rather than "a vibratory nebulizer".

Claim Rejections - 35 USC § 112

3. The rejection of claims 16-19, 51-56 and 59-64 under 35 U.S.C. 112, first paragraph is withdrawn due to the amendment to claim 16 of May 26, 2005 to provide that the surface is either a separator or cathode.
4. The rejection of claims 20-21 and 59-62 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is withdrawn due to the cancellation of claim 20, the amendment of claim 21, the cancellation of claim 58 and the amendment to claim 59 of May 26, 2005.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 16-18, 51-57, and 59-63 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5-6, 8-10

and 14-18 of U.S. Patent No. 6,589,612 ('612). Although the conflicting claims are not identical, they are not patentably distinct from each other because '612 provides claims that meet all the feature requirements of the claims of the present application, and also require other features not prevented by the claims of the present application. For example, claims 6 and 8 of '612 provides all features required by claim 16 of the present application.

7. In the amendment of May ²⁶~~25~~, 2005, applicant stated that they "do not necessarily agree with this rejection, but to obviate the rejection, Applicants may file a terminal disclaimer upon indication that the claims are otherwise allowable." As applicant has provided no argument to overcome the rejection, the obvious double patenting rejection is maintained.

Claim Rejections - 35 USC § 103

8. The rejection of claims 16, 17, 19-21, 51, 53, 55 and 57-64 under 35 U.S.C. 103(a) as being unpatentable over Reichert et al (US 6203941) in view of the admitted state of the prior art, Japan 1-159964 (hereinafter '964) and Hope et al (US 4888206) is withdrawn due to applicant's amendments and arguments of May 26, 2005.

9. The rejection of claims 18 and 52 under 35 U.S.C. 103(a) as being unpatentable over Reichert in view of the admitted state of the prior art, '964 and Hope as applied to

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claims 16, 17, 19-21, 51, 53, 55 and 57-64 above, and further in view of Sono-Tek

Technology Overview is withdrawn due to applicant's amendments and arguments of May 26, 2005.

10. The rejection of claim 54 under 35 U.S.C. 103(a) as being unpatentable over Reichert in view of the admitted state of the prior art, '964 and Hope as applied to claims 16, 17, 19-21, 51, 53, 55 and 57-64 above, and further in view of EP 898 316 A1 (hereinafter '316) is withdrawn due to applicant's amendments and arguments of May 26, 2005.

Allowable Subject Matter

11. Claims 19, 21, and 64-65 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The previously cited references, alone or in combination, do not teach or suggest to spray an electrolyte material, in the form of a spray formed by a vibratory nebulizer, to a surface in a battery container where the surface is a separator or cathode. Hope, which teaches a vibratory nebulizer, does not teach or suggest using this device to apply a electrolyte material onto a surface inside a battery container.

12. As to claims 16-18, 51-57, and 59-63, please note the double patenting rejection as discussed in the *Double Patenting* section above.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine A. Bareford whose telephone number is (571) 272-1413. The examiner can normally be reached on M-F(6:00-3:30) with the First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Other inquiries can be directed to the Tech Center 1700 telephone number at (571) 272-1700.

Furthermore, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


KATHERINE BAREFORD
PRIMARY EXAMINER